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4
5 Principal, California Water Research

6 **BEFORE THE**
7 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

8
9 HEARING REGARDING PETITION
10 FILED BY THE DEPARTMENT OF
WATER RESOURCES AND U.S. BUREAU
11 OF RECLAMATION REQUESTING
CHANGES IN WATER RIGHTS FOR THE
12 CALIFORNIA WATERFIX PROJECT

RESPONSE TO DEPARTMENT OF
WATER RESOURCES' OBJECTIONS TO
CALIFORNIA WATER RESEARCH /
DEIRDRE DES JARDINS' REBUTTAL
EXHIBITS

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15 Deirdre Des Jardins, principal at California Water Research ("California Water
16 Research") provides the following response to objections by the California Department of Water
17 Resources ("DWR") to California Water Research's rebuttal exhibits. DWR objected to the
18 following exhibits:
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20 DDJ-301	California Water Research Technical Memo, Under-Seepage and Seismic Safety Issues at Clifton Court Forebay
21 DDJ-302	Letter from Department of Water Resources to Susan Womack regarding Landowner Seepage Concerns
22 DDJ-303	California Department of Water Resources, Bulletin 200, Volume III, Storage Facilities (1974)
23 DDJ-304	US Army Corps of Engineers, Draft Integrated Interim Feasibility Study and Draft EIR/EIS for the San Joaquin River Basin, Lower San Joaquin River, CA (February 2015)
24 DDJ-305	FEMA Guidelines on Evaluation and Monitoring of Seepage and Internal Erosion, Interagency Committee on Dam Safety, 2015).

1 DDJ-326

2 Letter of Interest in WIFIA Loan Program from Brian Thomas,
3 Interim Executive Director, Delta Conveyance Finance Authority
4 to Andrew Wheeler, US EPA, July 27, 2018.

5 First, Exhibit DDJ-326, the *Letter of Interest in WIFIA Loan Program from Brian*
6 *Thomas, Interim Executive Director, Delta Conveyance Finance Authority to Andrew Wheeler,*
7 *US EPA, July 27, 2018,* was introduced by Deirdre Des Jardins in cross-examination of Dr.
8 Jeffrey Michael on or about August 17, 2018, and elicited testimony. Exhibit DDJ-326 was also
9 used by Osha Meserve in cross-examination of Dr. Jeffrey Michael, and elicited further
10 testimony. For clarity of the hearing record, the exhibit should be admitted.

11 The other exhibits consist of a technical report, Exhibit DDJ-301, on hazards that could
12 cause failure of Clifton Court Forebay, and the adequacy of the evaluation of those hazards by
13 DWR, and exhibits 302, 303, 304, and 305, which were referenced in the technical report. As
14 stated orally by California Water Research in argument on DWR's motion to strike Section 1 of
15 Exhibit DDJ-300-errata, testimony of Tom Williams, with the change in the Supplemental EIR
16 to constructing Byron Tract Forebay, there are now no plans for reconstruction of the Clifton
17 Court Forebay embankments or improvement of the foundation under the forebay embankment,
18 as was testified by Pirabarooan in Part 1 (R.T. August 23, 2016, 31:23-33:6.)

19 The Hearing Officer sustained DWR's motion to strike Section 1 of Exhibit DDJ-300-
20 errata before California Water Research could provide any further points or authorities in support
21 of the argument, and the ruling striking Section I was not clear on whether Section I of the
22 testimony was ruled beyond the scope of the hearing, or beyond the scope of response to DWR's
23 Supplemental EIR, or simply not rebuttal to DWR's witnesses' testimony in Part 2 Case in
24 Chief. The oral ruling on California Water Research and Clifton Court LLP's Motion for
25 Reconsideration of the Ruling Vacating the Notice Calling Tim Wehling, which pointed out that
26 the seepage hazard evaluation by DWR's Dams and Canals Section of Clifton Court Forebay

1 was not available during Part 1 or even for Part 2 Case in Chief, also had no details on why the
2 hazard analysis could not be introduced once it was discovered.

3 Suzanne Womack testified on cross-examination that she believed that Byron Tract
4 Forebay failure could endanger 13,000 people in Discovery Bay, based on her knowledge of the
5 area and the maps of the project in the Supplemental EIR, which are appended to this response.
6 The safety of Discovery Bay is of essential public interest, as well as that of other residents near
7 the proposed Byron Tract Forebay / Clifton Court Forebay complex. Since some testimony on
8 hazards to Byron Tract Forebay and Clifton Court Forebay has been allowed on rebuttal,
9 California Water Research provides the following points and authorities for acceptance of
10 Exhibits DDJ-301 to DDJ-305, in hopes of further clarity in the hearing ruling.

- 11
12 1. The exhibits are properly within the scope of the hearing. Article X, Section 2 of the
13 California Constitution provides that the right to the use of water “does not and shall
14 not extend to the [...] unreasonable method of diversion of water.” The constitutional
15 standard of “reasonable method of diversion” should be applied to the entire
16 impoundment complex consisting of Byron Tract Forebay and Clifton Court Forebay,
17 not just to the new construction.
- 18 2. The Hearing Chair allowed cross-examination of John Bednarski on whether the
19 failure of Clifton Court Forebay could be a root cause of failure of Byron Tract
20 Forebay, and Bednarski testified that the subject would be addressed as part of the
21 hazard assessment for Byron Tract Forebay. This appeared to establish that the
22 subject of failure of Clifton Court Forebay was within the scope of the hearing, and
23 also was within the scope of DWR’s Supplemental EIR, at least as a hazard to Byron
24 Tract Forebay. Allowing cross-examination of DWR’s witnesses on failure of Clifton
25 Court Forebay as a potential root cause of failure of the Byron Tract Forebay, but not
26 allowing submission of any testimony or evidence on the subject, would be an

1 arbitrary adjudicative procedure, which is contrary to *People v. Ramirez* (1979) 25
2 *Cal.3d* 260, 268-69; accord *Saleeby v. State Bar of California*, (1985) 39 *Cal.3d* 547,
3 563-64.

4 3. The subject of hazard analysis for Clifton Court Forebay, and resulting hazard to the
5 new Byron Tract Forebay, is properly responsive to DWR's EIR Supplement.

6 a.) The Hearing Officer's June 18, 2018 Hearing ruling stated, "the parties may
7 submit evidence that is responsive to DWR's EIR Supplement, even if that
8 evidence touches on matters not directly raised during the case-in-chief phase of
9 Part 2." (p. 2.)

10 4. The Hearing Officers have also ruled that exhibits do not need supporting testimony
11 to be admitted into evidence.

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13 Thank you for your consideration of these responses, and for any further clarity the
14 Hearing Officers can provide on the subjects addressed in Exhibits DDJ-301 through 305.

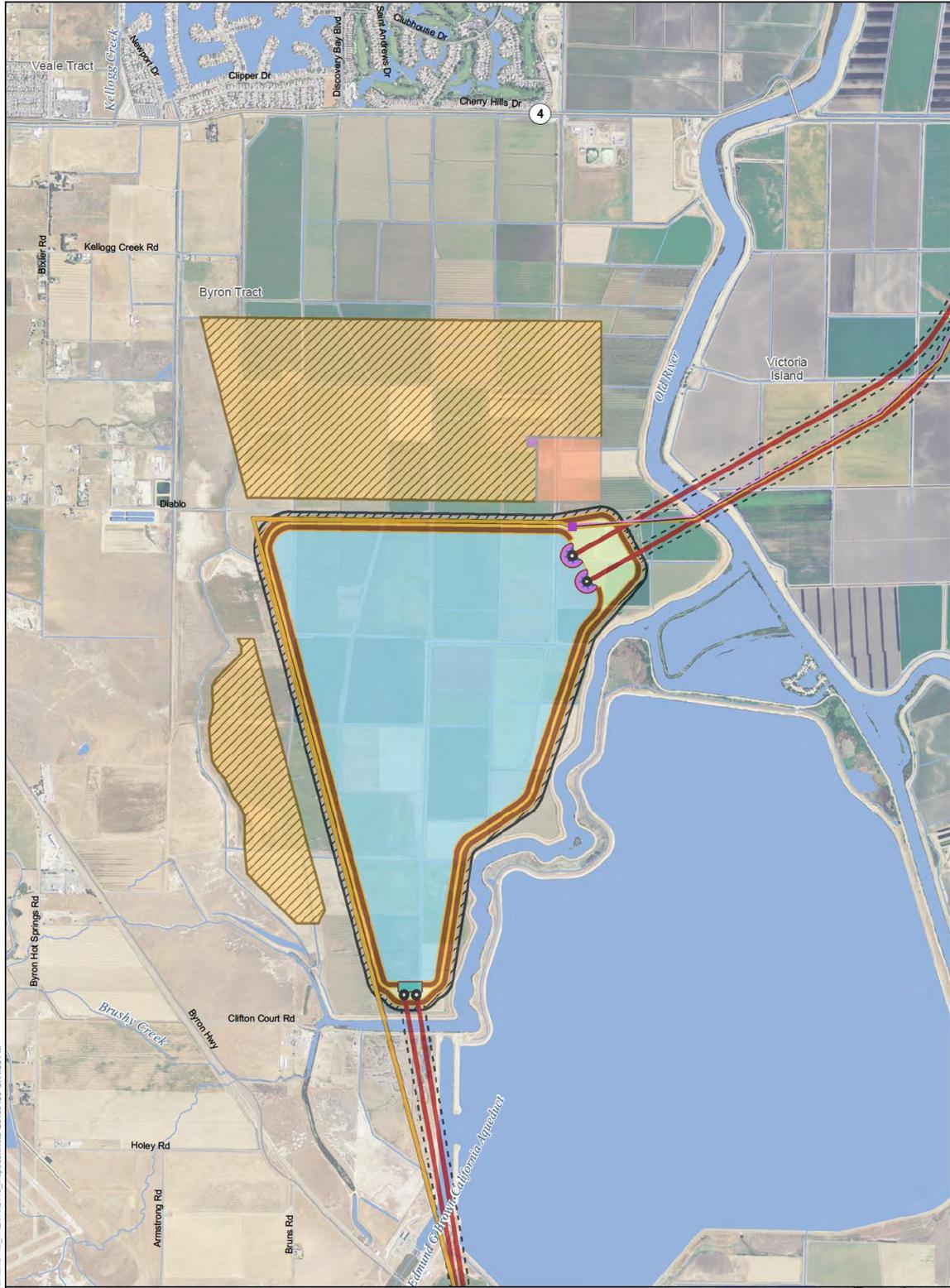
15
16 Dated August 29, 2018

Respectfully submitted,

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19 Deirdre Des Jardins
20 Principal, California Water Research

P. 13 of 2018 CER mapbook, Exhibit DWR-1306, showing CCF, BTF, and Discovery Bay.



1 **STATEMENT OF SERVICE**

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3 **CALIFORNIA WATERFIX PETITION HEARING**
4 **Department of Water Resources and U.S. Bureau of Reclamation**
5 **(Petitioners)**

6 I hereby certify that I have this day submitted to the State Water Resources
7 Control Board and caused a true and correct copy of the following document(s):

8 **Response to Department of Water Resources' Objections to**
9 **California Water Research / Deirdre Des Jardins' Rebuttal Exhibits**

10 to be served by Electronic Mail (email) upon the parties listed in the Current Service List
11 for the California Water Fix Petition Hearing, dated August 14, 2018, posted by the
12 State Water Resources Control Board at
13 [http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml)
14 [waterfix/service_list.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml)

15 *Note: In the event that any emails to any parties on the Current Service List are*
16 *undeliverable, you must attempt to effectuate service using another method of service, if*
17 *necessary, and submit another statement of service that describes any changes to the*
18 *date and method of service for those parties.*

19 I certify that the foregoing is true and correct and that this document was executed on
20 August 29, 2018.

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Signature:



Name: Deirdre Des Jardins
Title: Principal, California Water Research

Party/Affiliation:
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